

F4UPSIMS

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,

4 v.

12 CR 652 (MHD)

5 JOANNE SIMMONS,

6 Defendant.

7 -----x
8 New York, N.Y.
9 April 30, 2015
11:16 a.m.

10 Before:

11 HON. MICHAEL H. DOLINGER,

12 Magistrate Judge

14 APPEARANCES

15 PREET BHARARA,
16 United States Attorney for the
17 Southern District of New York
KATHERINE REILLY
CHRISTINE MAGDO
18 Assistant United States Attorneys

19 JOSHUA LEWIS DRATEL
20 WHITNEY SCHLIMBACH
Attorneys for Defendant

F4UPSIMS

1 (In open court)

2 (Case called)

3 MS. MAGDO: Good morning, your Honor. Assistant U.S.
4 Attorney, Christine Magdo on behalf of the government. With me
5 at counsel table is Assistant U.S. Attorney Kathy Reilly.

6 MS. REILLY: Good morning, your Honor.

7 MR. DRATEL: Good morning, your Honor. Joshua Dratel
8 for Joanne Simmons, and with me is Whitney Schlimbach, and
9 Ms. Simmons is here. She, obviously, would rise, but she can't
10 get up from the wheelchair.

11 THE COURT: Good morning. That's all right. I have
12 received and reviewed a presentence memorandum prepared by the
13 probation officer. I have also received and reviewed an
14 April 24, 2015, letter from defense counsel which includes a
15 number of exhibits, including several letters on Ms. Simmons'
16 behalf, and I have also received and reviewed a letter dated
17 yesterday from the government, indicating that the government
18 does not object to a sentence below the guidelines range in
19 this case.

20 First of all, does anyone have any objection to any
21 aspect of the presentence report, whether with regard to the
22 guideline calculation or any of the historical facts elaborated
23 on there?

24 MS. MAGDO: Not from the government, your Honor.

25 MR. DRATEL: No, your Honor.

F4UPSIMS

1 THE COURT: Very well. I will be happy to hear from
2 you, Mr. Dratel, as to sentence.

3 MR. DRATEL: Thank you, your Honor. I think we're in
4 a relatively unique situation in that the PSR, the government
5 and the defense are in relative, if not specific, agreement,
6 but I think in terms of the spirit of the government letter,
7 that a sentence of probation is essentially what is underlying
8 that recommendation and the government's position.

9 And the PSR is explicit, obviously, in the
10 probationary sentence, and that's what we would request. I'm
11 not going to belabor or repeat what's in our letter. I know
12 the Court has read it, and it sets forth ample and compelling
13 reasons, we think, for probation.

14 So unless the Court has specific questions, I think
15 we'll rest on our papers in that regard because, as I said,
16 it's set forth comprehensively. I don't see a need to repeat,
17 and I know, obviously, it depends on what the government has
18 presented as well.

19 THE COURT: Okay. Does the government wish to be
20 heard on sentence?

21 MS. MAGDO: Unless your Honor has specific questions,
22 we would just rest on our submission of yesterday.

23 THE COURT: I do have one question that I'm -- one
24 piece of the puzzle that I'm a little bit unclear about. What
25 is the government's understanding as to what was going on with

F4UPSIMS

1 this apartment, other than the fact that Ms. Simmons,
2 obviously, was not living there? What was she doing with it?

3 MS. MAGDO: So our understanding, based on our
4 investigation, is that Ms. Simmons has a number of adult
5 children, and they were being allowed to live there, sometimes
6 with their significant others and their children, and other
7 times it was left vacant, and perhaps from time to time
8 Ms. Simmons was living there, as well, on a temporary basis.

9 THE COURT: So there is no suggestion that she was
10 otherwise profiting from the scheme, if you will, that is, by
11 renting the apartment out and earning money that way?

12 MS. MAGDO: That's correct, your Honor.

13 THE COURT: All right. Thank you. Ms. Simmons, is
14 there anything that you would like to say before sentence is
15 pronounced?

16 THE DEFENDANT: Yes. Thank you so much. I thank you,
17 and I wanted to say that, as me being a mother, I was taking
18 care of my kids in the apartment, which I was entitled to, and
19 I didn't do anything wrong. But I tried to mother my kids and,
20 you know, your Honor, I never have done anything wrong. I have
21 no records and those things, and I just want to thank you.

22 I'm just so sorry. I don't want to waste your time.
23 I don't want to be a burden to no one. You know, I've just
24 been taking care of everybody, and I thank you for taking care
25 of me. I just put myself at the mercy of the Court because I'm

F4UPSIMS

1 just home -- I'm so full. I just got into an accident, a car
2 hit me, and I'm just feeling like everybody is trying to either
3 hit me or kill me or take things from me, and I just been
4 trying my best.

5 I go to chaplain school now, and I want to live a good
6 life, and I want to be able to take care of my grandkids. I
7 got my son here with me and, you know, now they're showing
8 support. And they have to take care of me, and it's a hard
9 thing because they have to shower me, and they have to do all
10 these things for me.

11 And so I'm just saying, please, I throw myself on the
12 mercy of the Court. If you could just find it in your heart to
13 just -- I haven't done anything wrong; so, please, I'm so
14 sorry. Thank you. Thank you so much.

15 THE COURT: In reviewing the facts of this somewhat
16 unusual case, I think one thing that does stand out, other than
17 the presentation made by defendant's counsel and the
18 presentence report and even now by Ms. Simmons, herself, is
19 that she has, over a period of many years, apparently started
20 even prior to adulthood, undergone a long series of events that
21 were both unfortunate and, no doubt, painful to her.

22 And with limited resources, she has sought, as I see
23 from that history, to survive as best she could and support her
24 family as best she could. There's no question that although
25 Ms. Simmons says that she has done nothing wrong, that she did

F4UPSIMS

1 one thing plainly wrong, which is why she is here now.

2 Ms. Simmons, given all of that, and given a large
3 helping of misfortune, there are some silver linings. Indeed,
4 in the fact that some of your children and siblings have come
5 to your support here and, as well, reflected in the efforts of
6 now several very able lawyers to protect your interests and
7 your rights in this case.

8 Under all the circumstances, I agree with the views
9 expressed by probation and by Mr. Dratel that the appropriate
10 disposition in this case is a period of probation, and I do so
11 in reflection on the fact that, notwithstanding the amount of
12 money diverted from a proper government program by virtue of
13 misstatements made through the years in forms given to HUD,
14 that you have not had any prior record or criminal conduct or
15 any indication that you have deviated significantly from both
16 legal and moral standards.

17 I'm equally persuaded that there is no risk in the
18 future of your straying from the path of both legal and moral
19 righteousness. I'm satisfied, as well, that given the various
20 physical disabilities that you've been suffering from, as well
21 as the struggle you've had to maintain a psychological balance,
22 that probation is the only appropriate alternative.

23 I am also impressed by the fact that you have, even in
24 the last few years, been making efforts to obtain skills and to
25 contribute in whatever way you can to the needs of the

F4UPSIMS

1 community, as well as your family.

2 Thus, I will impose a term of probation of three
3 years. The probation comes with a variety of mandatory
4 conditions and standard conditions. In addition, it is
5 required that you undertake and continue such mental health
6 treatment as probation deems appropriate.

7 In view of your financial circumstances, there will be
8 no fine imposed. There is a requirement, which we alluded to
9 during our various efforts to get a plea, that you pay
10 restitution as part of your sentence. The restitution is in
11 the amount of \$123,029. I recognize that, given your
12 resources, payment will be in small amounts, and we will
13 require simply that restitution be paid monthly in the amount
14 of 15 percent of your monthly income, starting 30 days from
15 today. There is a mandatory special assessment of \$25 which
16 must be paid.

17 In addition, as requested by probation, you will be
18 subject to a required set of drug tests. My understanding is
19 there is one that would happen immediately, and then there will
20 be two others during the period of probation. There are some
21 additional special conditions to probation, one of which is you
22 are required, if requested by your probation officer, to
23 provide whatever financial information the officer seeks.

24 In addition, you are not to open any new credit and
25 sustain any new credit charges or open any new lines of credit

F4UPSIMS

1 without permission of your probation officer. You are also
2 required to report to the probation department within 72 hours
3 from today. I do not recall, it being some time since we had
4 our entry of a plea, whether you had waived your right to
5 appeal in any respect. If not, I will remind you then that you
6 have a right to appeal from this sentence, if you choose to do
7 so. Obviously, you will confer with your able counsel about
8 that, if that option is even open to you.

9 Are there any other items that we need addressed at
10 this time?

11 MS. MAGDO: Not from the government, your Honor. Oh,
12 your Honor, we did submit a proposed order of restitution for
13 your Honor's consideration. I have a clean copy, if I may pass
14 that up.

15 THE COURT: I have a clean copy, too. So unless
16 there's an objection from defendant, I assume that this order
17 of restitution --

18 THE DEFENDANT: Your Honor?

19 THE COURT: I assume that this order of restitution
20 is --

21 MR. DRATEL: Yes, your Honor.

22 THE DEFENDANT: Your Honor?

23 MR. DRATEL: It's the amount in the plea agreement is
24 appropriate.

25 THE DEFENDANT: Your Honor, please. Your Honor. I

F4UPSIMS

1 just want to address you. Can you take me today instead of
2 putting me on probation? I don't want probation, please.

3 THE COURT: Ms. Simmons?

4 THE DEFENDANT: Is there any way you can just take me?
5 I don't want to be a burden to nobody. I don't want to be a
6 burden.

7 THE COURT: Ms. Simmons?

8 THE DEFENDANT: I don't want to be a burden to
9 probation. If you want to just take me, just take me because I
10 don't want to be probation. I had strict probation already. I
11 did. I've been reporting, and I showed you all the papers. I
12 have papers right now. I was going to Ms. Powers. I was going
13 to Ms. Jones. So if you just want to put me to a place or
14 something.

15 THE COURT: Miss Simmons, the decision of the Court is
16 what it is. I suggest that you accept it in good grace and go
17 on with your life.

18 MR. DRATEL: Thank you, your Honor.

19 THE COURT: Thank you, all.

20 MS. MAGDO: Thank you, your Honor.

21 THE DEFENDANT: Thank you so much, your Honor.

22 THE COURT: You're very welcome.

23 THE DEFENDANT: God bless you and your family. Thank
24 you so much.

25 (Adjourned)